

**SUBJECT:** Creation of probate masters for statutory probate courts

**COMMITTEE:** Judicial Affairs — favorable, without amendment

**VOTE:** 5 ayes — Thompson, Deshotel, Hinojosa, Shields, Uresti  
0 nays  
4 absent — Hartnett, Capelo, Garcia, Jim Solis

**SENATE VOTE:** On final passage, Local and Uncontested Calendar, March 3 — 31-0

**WITNESSES:** For — Judge Guy Herman, Statutory Probate Judges of Texas  
Against — Mary Kirksey

**BACKGROUND:** A statutory probate court is designated to deal with matters relating to wills and estate administration. Under current law, there are no probate masters who serve statutory probate courts. Family and criminal courts may appoint magistrates and masters to conduct certain hearings for the judge.

**DIGEST:** SB 294 would amend the Government Code to allow appointment of probate masters for statutory probate courts. A probate master would be considered a magistrate and would be afforded the judicial immunity of a probate judge. The bill would not apply to the statutory probate courts of Dallas County.

**Appointment, compensation, and termination.** Upon approval of the county commissioners court, a statutory probate court judge could appoint a probate master. The commissioners court could authorize a probate master for each statutory probate court or one or more probate masters to share service with two or more courts. If a probate master served more than one court, the appointment would have to be made with the unanimous approval of all judges under whom the master served.

A probate master would be entitled to compensation at a rate set by the appointing judge and approved by the commissioners court. The master's salary could not exceed the salary of the appointing judge and would have to be paid from the county general fund.

A probate master serving a single court would serve at the will of that court's judge. The employment of a probate master serving more than two courts could be terminated only by a majority vote of the judges of the courts the master served. A probate master who served two courts could be terminated by either of those courts' judges. The appointment of a probate master would end if the appointing judge vacated the judge's office, if the probate master became candidate for election to public office, or if the commissioners court did not appropriate funds in the county's budget to pay the master's salary.

**Probate master's authority.** The bill would authorize a probate master to:

- ! conduct a hearing;
- ! hear evidence;
- ! compel production of relevant evidence;
- ! rule on the admissibility of evidence;
- ! issue a summons for the appearance of witnesses;
- ! examine a witness;
- ! swear a witness for a hearing;
- ! make findings of fact on evidence;
- ! formulate conclusions of law;
- ! recommend an order to be rendered in a case;
- ! regulate all proceedings in a hearing before the probate master; and
- ! take action as necessary and proper for the efficient performance of the probate master's duties.

A statutory probate court judge could refer to a probate master any aspect of a suit over which the probate court had jurisdiction, including ancillary matters. The judge could refer a trial on the merits to the probate master unless a party filed a written objection. The bill would define a trial on the merits as any final adjudication from which an appeal could be made. A party would have to file an objection not later than the tenth day after the date the party received notice that the probate master would hear the trial. If an objection was filed, the referring court would have to hear the trial on the merits.

For a contested trial on the merits of a lawsuit in which the referring court had concurrent jurisdiction with a district court, all parties would have to consent in writing for the trial to be transferred to a probate master. If a jury trial was demanded and a jury fee was paid in a trial on the merits, the

probate master would have to refer any matters requiring a jury back to the referring court for a trial before the referring court and the jury.

A witness that appeared before a probate master would be subject to perjury penalties. A referring court could fine or imprison a witness who failed to appear before a probate master after being summoned or who improperly refused to answer a question under certain conditions.

**Court personnel.** A bailiff would have to attend a hearing conducted by a probate master if directed to attend by the referring court. A court reporter would not have to attend a hearing held by a probate master except under certain conditions.

**Probate master's report and appellate procedure.** A probate master could prepare a report that could contain the probate master's findings, conclusions, or recommendations. The written report would have to be prepared in the form directed by the referring court and could be a notation on the referring court's docket sheet. A notice of the contents of the probate master's report would have to be provided to the parties after the hearing. Notice to parties would have to follow certain procedures.

The probate master also would have to give notice to all the parties involved of the right to appeal to the referring statutory probate court judge. The notice could be given orally in open court, by a posting in or around the courtroom, or as otherwise directed by the referring court. During the period when the appeal was pending, the probate master's report would have the force and effect of a referring court's order. If the parties were to file an appeal as prescribed by the bill, the findings and recommendations of the probate master would become the order of the referring court.

An appeal would have to be filed according to certain time and notice conditions and would have to be limited to the findings and conclusions specified in the written appeal. Parties could call witnesses on appeal to the referring court as in a hearing at which the facts were heard for the first time. Notice to parties for the appeal would have to follow the Texas Rules of Civil Procedure. SB 294 would specify other filing timetables and notice requirements. If a party failed to appeal to the referring court, that party could seek other relief from a court of appeals or from the Texas Supreme Court.

A referring court could, absent a notice of appeal, adopt, modify, or reject the probate master's report, hear further evidence, or recommit the matter to the probate master for further proceedings.

SB 294 also would make conforming changes to the Code of Criminal Procedure relating to the probate master's status as a magistrate.

This bill would take effect September 1, 1999.

**SUPPORTERS  
SAY:**

SB 294 would help expedite probate proceedings. Masters already are used successfully in certain statutory family and criminal law courts. Many judges who are stuck in trial cannot preside over probate matters. This bill would permit judges of statutory probate courts to appoint probate masters to dispose of many pending matters before a court, subject to approval of the commissioners court.

Probate masters would be especially helpful in presiding over uncontested, routine probate administration, freeing the statutory probate court judges to preside over contested wills. The probate masters also could preside over a trial on the merits upon consent of all parties, but the referring statutory probate court would retain appellate review of the trial record. This would ensure that all parties had court access.

**OPPONENTS  
SAY:**

Probate masters are not elected officials. Under SB 294, these probate masters could be hired and fired at the will of the statutory probate court judge. Therefore, the proceedings presided over by probate masters could be influenced unduly and open to abuse.